United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 20-0661**
	)	**Issued: April 14, 2021**
U.S. POSTAL SERVICE, CHICAGO INTERNATIONAL SERVICE CENTER, Chicago, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 3, 2020 appellant, through counsel, filed a timely appeal from a December 19, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish bilateral foot/ankle conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On May 2, 2018 appellant, then a 55-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained a heel-bone spur causally related to factors of her federal employment. She noted that she first became aware of her condition and realized its relation to her federal employment on September 16, 2008. Appellant stopped work on May 2, 2018.

In a June 13, 2018 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim, including a narrative medical report from a treating physician, containing a detailed description of findings and a diagnosis, explaining how her work activities caused, contributed to, or aggravated her medical conditions. OWCP also provided a questionnaire for appellant's completion regarding her employment activities. It afforded her 30 days to respond.

OWCP received progress notes from Dr. Garo Emerzian, a podiatrist. On May 29, 2018 Dr. Emerzian noted that appellant was seen for plantar fasciitis. He indicated that she worked as a mail handler and engaged in "loading trucks and things." Dr. Emerzian diagnosed sinus tarsi syndrome, left worse than right, posterior tibial tendinitis, bilateral, peroneal tendinitis, left side, plantar fasciitis, improving, and osteoarthritis of the first metatarsophalangeal joint (MTPJ), bilateral. In a May 29, 2018 work status report, he diagnosed bilateral plantar fasciitis and recommended a return to sedentary work.

In a statement received on July 18, 2018, appellant described her work activities as a mail handler. She indicated that, over the past 30 years, she worked 5 to 6 days per week, 6 to 8 hours per day. Appellant indicated that her duties included standing, walking, lifting bags of mail weighing up to 50 pounds, bending, twisting, stooping, and reaching, while sorting and processing mail in many forms, including large and small packages, letter trays, flat tubs, large and small boxes, averaging 10,000 steps per day at work. She alleged that she worked on the concrete surface dock while loading and unloading trailers of mail and empty equipment, weighing over two tons on wheels, standing to rewrap damaged packages and parcels, working on the dock dumping bags into the sack sorter system, dumping sacks into the bulk mail carriers below the ramp, dumping sacks of mail onto a belt in central dispatch, sorting mail from a moving belt in customs, taking out full equipment and replacing with empty ones, replacing full bags after tying them out, and hand strapping with plastic straps. Appellant noted that she had undergone surgery in 2009 for plantar fasciitis, but the same symptoms returned.

Appellant also explained that she delayed reporting her injury as she was unaware that the condition she experienced in 2008 was the result of her federal employment duties. She related that she was now convinced that her conditions were the direct result of her employment activities

over many years. Appellant explained that she worked long hours standing, walking, and lifting volumes of weight on the employing establishment's concrete surfaces.

In an April 30, 2018 work status report, Dr. David E. Hamming, a Board-certified orthopedic surgeon, diagnosed bilateral heel pain, rule out stress fracture, and requested a magnetic resonance imaging (MRI) scan of appellant's feet. He recommended a return to sedentary work.

In a July 11, 2018 ultrasound report of the right and left foot and ankle, Dr. Brian Kincaid, a chiropractor, diagnosed plantar fasciitis medial and central band origin of the plantar fasciitis bilaterally, osteoarthritis first MTPJ bilaterally, mild Achilles enthesopathy bilaterally with no acute or chronic gross defects multilobulated ganglion cyst, and a mildly attenuated anterior talofibular ligament bilaterally at the lateral malleolus attachment consistent with old moderate sprains.

In a July 12, 2018 report, Dr. Emerzian noted that appellant returned for follow-up of plantar fasciitis, right worse than left. He related that she was on restricted sedentary work duty. Dr. Emerzian diagnosed Achilles insertional tendinitis, right side greater than left, plantar fasciitis, right greater than left, sinus tarsi syndrome, pain in foot and ankle, and osteoarthritis, first MTPJ bilaterally. He explained that "The osteoarthritis in the first M[T]PJ of both feet may be contributing to the pain and discomfort in the sinus tarsi region. [Appellant] may be compensating from that." Dr. Emerzian completed a July 12, 2018 work status report and diagnosed sinus tarsi syndrome, posterior tibial tendinitis, and peroneal tendinitis. He recommended sedentary work and standing as tolerated with controlled ankle motion boots.

In a July 24, 2018 report, Dr. Emerzian noted appellant's medical history, provided examination findings, and diagnosed plantar fasciitis, bilateral. He explained that long periods of standing can exacerbate plantar fasciitis.

In August 2 and 21, 2018 reports, Dr. Emerzian diagnosed Achilles insertional tendinitis, right greater than left, plantar fasciitis, right greater than left, sinus tarsi, syndrome, osteoarthritis bilateral, and pain in foot and ankle. He provided work restrictions on August 2 and 23, 2018, and continued to recommend "nonweightbearing" work.

By decision dated August 27, 2018, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical conditions and the accepted factors of her federal employment.

OWCP continued to receive medical evidence. In a May 8, 2018 report, Dr. Emerzian noted that appellant had complaints of bilateral heel pain for the last three weeks. He noted that she related that she had experienced the same condition 2009, which resulted in a plantar fascial release. Dr. Emerzian diagnosed plantar fasciitis, bilateral, osteoarthritis first MTPJ right foot, and pain in foot and ankle. In an August 21, 2018 report, he noted that appellant was seen for follow-up of her plantar fasciitis on the right side, Achilles tendinitis, and pain in the foot and ankle. Dr. Emerzian noted that she was improving. He diagnosed Achilles tendinitis, plantar fasciitis, right greater than left, sinus tarsi syndrome, and bilateral osteoarthritis, first MTPJ. Dr. Emerzian noted that appellant's cast was removed and a new cast was reapplied on the right side. He treated her on May 22 and 29, and September 6, 2018, provided a referral for physical

therapy, and placed appellant off work. Dr. Emerzian also provided progress notes dated September 11 and 20, 2018 wherein he reiterated appellant's diagnoses and treatment plan. In the September 11, 2018 report, he noted that she carried and lifted from 10 to 50 pounds during the course of the day, which "can" exacerbate her plantar fasciitis.

On May 31, 2019 appellant requested reconsideration.

In a September 25, 2018 report, Dr. Joel R. Anderson, a podiatrist, diagnosed plantar fasciitis, bilateral feet. He advised that appellant related that, in 2009, she underwent a surgical procedure and the heel pain had resolved, but in April 2018 the heel pain returned. Dr. Anderson diagnosed plantar fasciitis, bilateral heel pain, bilateral calcaneal spurs, insertional Achilles tendinopathy, sinus tarsi syndrome of right ankle, osteoarthritis of foot joint, bilateral, and acquired hallux rigidus, bilateral. He noted that he had reviewed appellant's job description, which included working for 30 years with repetitive stress on both feet, 6 to 8 hours a day, 5 to 6 days per week with ambulatory activities on concrete floors with limited access to stress mats, carrying up to 50 pounds regularly, and averaging 10,000 steps a day. Dr. Anderson explained that plantar fasciitis and Achilles tendinitis was an overuse injury or a repetitive stress injury and opined that a strain injury could be from excessive running, walking, or inadequate foot gear. He opined that appellant's heel pain was consistent with the stress of her daily employment activities and that "[t]here appears to be a causal relationship of her heel pain with her employment requirements."

In a report dated October 11, 2018, Dr. Anderson related that appellant was seen for bilateral heel and plantar fasciitis pain, which had improved following an injection. He reiterated appellant's diagnoses from his September 25, 2018 report. In a December 6, 2018 duty status report, Dr. Anderson diagnosed plantar fasciitis and other disabling conditions of degenerative joint disease. He indicated that appellant was unable to perform her regular duties and prescribed work restrictions. In a December 6, 2018 report, Dr. Anderson noted that appellant presented with minimal bilateral foot pain. He also related that she had pain in her feet which was aggravated by prolonged periods of standing and walking. Dr. Anderson explained that after six hours of being on appellant's feet, they would get very painful. He diagnosed plantar fasciitis, heel pain, bilateral, calcaneal spur, bilateral, insertional Achilles tendinopathy, acquired hallux rigidus, bilateral, and peroneal tendinitis, right. Dr. Anderson advised a return to work with restrictions.

Dr. Anderson treated appellant on January 24, March 7, 11, and 18, and April 16, 2019. In the March 7 and 18, 2019 reports, he advised that plantar fasciitis was an overuse injury or repetitive strain injury and that "such strain injury can be from excessive running, walking or inadequate footgear. [Appellant's] heel pain is consistent with the stresses of her every day activities associated with her employment. There appears to be a causal relationship of her heel pain with her employment requirements."

By decision dated July 12, 2019, OWCP denied modification of the August 27, 2018 decision.

On October 23, 2019 appellant, through counsel, requested reconsideration and submitted a new report from Dr. Anderson.

In a September 10, 2019 report, Dr. Anderson noted that appellant complained of pain in her bilateral heels and plantar fasciitis. He indicated that the date of injury was April 16, 2018, and that appellant was reinjured on July 18, 2019 at her place of employment. Dr. Anderson noted that appellant related that she "directly stepped on the 'bag lock' with her heel causing significant pain and she withdrew quickly spraining her ankle and knee." He advised that she continued with no change to the pain in her heel and that she presented with medical articles that "states plantar fasciitis is directly related to repetitive stress in a work environment that requires prolonged standing and walking on concrete surfaces." Dr. Anderson also indicated that appellant related that standing and walking on the hard surfaces at work caused significant pain and inability to perform her normal daily employment duties. He indicated that he would follow the progress of her heel pain due to the recent aggravation of the plantar fasciitis related to the direct contusion type injury from stepping on the "bag lock." Dr. Anderson opined that the "plantar fasciitis condition has been aggravated and accelerated by the recent injury" and "the compensation of the left ankle and knee is stressing the right heel as well." He noted that "[r]epetitive stress will cause worsening of the heel pain and restrictions on her employment are necessary to avoid further injury and complications of her condition."

By decision dated December 19, 2019, OWCP denied modification of the July 12, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,[3] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or

[3] *S.A.*, Docket No. 20-0458 (July 23, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.[6]

To establish causal relationship between the condition, as well as any attendant disability claimed and factors of employment, the employee must submit sufficiently rationalized medical opinion evidence.[7] The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish bilateral foot/ankle condition causally related to the accepted factors of her federal employment.

In a May 8, 2018 report, Dr. Emerzian noted that appellant had undergone a plantar fascial release in 2009 and he diagnosed plantar fasciitis, bilateral, osteoarthritis of the first MTPJ right foot, and pain in foot and ankle. In a May 29, 2018 progress note, he diagnosed sinus tarsi syndrome, left worse than right; posterior tibial tendinitis, bilateral, peroneal tendinitis, left side, plantar fasciitis, improving, and osteoarthritis of the first MTPJ bilateral. In his work status report, also dated May 29, 2018, Dr. Emerzian diagnosed bilateral plantar fasciitis. In progress reports dated through September 20, 2018, he related appellant's diagnoses and work restrictions. The Board notes that these reports contain diagnoses but no opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[9] Accordingly, these reports are insufficient establish appellant's claim.

In a July 12, 2018 report, Dr. Emerzian diagnosed Achilles insertional tendinitis, right side greater than left, plantar fasciitis, right greater than left, sinus tarsi syndrome, pain in foot and ankle, and osteoarthritis, first metatarsophalangeal joint bilaterally. He explained that "The osteoarthritis in the first M[T]PJ of both feet may be contributing to the pain and discomfort in the sinus tarsi region. [Appellant] may be compensating from that." The Board notes that Dr. Emerzian is attributing appellant's condition to her osteoarthritis and does not discuss her work factors. This report is insufficient to establish her claim.

In a July 24, 2018 report, Dr. Emerzian diagnosed plantar fasciitis, bilateral and opined that "long periods of standing can exacerbate plantar fasciitis." In his September 11, 2018 report, he noted that appellant lifted and carried weights up to 50 pounds while performing her work duties. Dr. Emerzian indicated that lifting and carrying increased weight "can" exacerbate her plantar

[6] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[8] *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *I.J.*, 59 ECAB 408 (2008).

[9] *L.B.*, Docket No. 19-1907 (issued August 14, 2020); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

fasciitis. The Board has held that a medical opinion that is speculative or equivocal in nature is of diminished probative value.[10] Moreover, a medical opinion must explain how the implicated employment factors physiologically caused, contributed to, or aggravated the specific diagnosed conditions[11] Dr. Emerzian did not offer any medical rationale to explain how appellant's conditions were related to factors of her federal employment.

In an April 30, 2018 work status report, Dr. Hamming diagnosed bilateral heel pain, rule out stress fracture. The Board has explained that pain is not considered a diagnosis and merely refers to a symptom of an underlying condition.[12] As such, this report is insufficient to establish appellant's claim.

OWCP also received a number of progress reports from Dr. Anderson in which he reiterated appellant diagnoses and medical treatment. Regarding causal relationship, in reports dated September 25, 2018 and March 7 and 18, 2019, Dr. Anderson noted that her job duties included up to nine hours of standing on concrete surfaces without stress mats. He diagnosed plantar fasciitis, bilateral heel pain, bilateral calcaneal spurs, insertional Achilles tendinopathy, sinus tarsi syndrome of right ankle, osteoarthritis of foot joint, bilateral, and acquired hallux rigidus, bilateral. Dr. Anderson explained that plantar fasciitis and Achilles tendinitis was an overuse injury or a repetitive stress injury and opined that such strain injury could be from excessive running, walking, or inadequate foot gear. He opined that appellant's heel pain was consistent with the stresses of her everyday employment activities and that "[t]here appears to be a causal relationship of her heel pain with her employment requirements." As noted, a medical opinion that is speculative or equivocal in nature is of diminished probative value.[13] Accordingly, Dr. Anderson's speculative, opinion is insufficient to establish appellant's claim.

In a September 10, 2019 report, Dr. Anderson indicated that the date of injury was April 16, 2018 and that appellant was reinjured on July 18, 2019 at her place of employment when she "directly stepped on the 'bag lock' with [appellant's] heel causing significant pain and she withdrew quickly spraining her ankle and knee." The Board notes that the history of injury provided in this report from him does not comport with the employment factors described by her. On her claim form appellant alleged that her conditions were caused by the repetitive activities of her job up until May 2, 2018, the date she filed her occupational disease claim. This claim does not pertain to a traumatic incident she sustained on July 18, 2019.

The record contains a December 31, 2018 note from a physician assistant. Certain healthcare providers such as physician assistants are not considered "physician[s]" as defined

[10] *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

[11] *Id.*

[12] *See N.X.*, Docket No. 20-0499 (issued November 6, 2020); *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, not a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[13] *C.B.*, *supra* note 10.

under FECA.[14] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[15]

OWCP received a July 11, 2018, ultrasound of the right and left foot and ankle from Dr. Kincaid, a chiropractor. Under FECA, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.[16] The report of Dr. Kincaid is not considered to be medical evidence and is of no probative value regarding appellant's disability claim because he did not treat her for spinal subluxations that were demonstrated by x-ray to exist.

As the record does not contain rationalized medical evidence establishing causal relationship between appellant's diagnosed bilateral foot conditions and the accepted factors of her federal employment, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a bilateral foot/ankle condition causally related to the accepted factors of her federal employment.

[14] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See C.K.*, Docket No. 19-1549 (issued June 30, 2020) (physician assistants are not considered physicians under FECA).

[15] *Id.*

[16] 5 U.S.C. § 8101(2). *See A.M.*, Docket No. 16-1875 (issued August 23, 2017); *Jack B. Wood*, 40 ECAB 95, 109 (1988).

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2019 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board